

**REMARKS**

Claims 1, 3-9, 11, and 25-28 are in this Application. Claims 2, 3, 10 and 12-24 were previously canceled and Claims 25-27 remain withdrawn without prejudice. Claim 1 has been amended. Claims 29 through 33 are new. Thus, Claims 1, 4-9, 11, 28-33 are currently pending in this Application.

Claim 1 has been amended recite that the range of bleached fibers relative to the total cellulose fiber content is 12 to 17 weight percent. Claim 29 has been added that recites a cementitious matrix that does not include calcium silicate hydrate and that recites a range of bleached cellulose fibers between about 12 and 17 weight percent of the total cellulose fibers incorporated into the matrix. New independent Claim 30 more specifically calls out ranges of specific compounds for the cementitious binder, aggregate, density modifiers, additives, and cellulose fibers where the portion of bleached fibers is about 12 to 17 weight percent of the total cellulose fibers. New Claims 31 and 32 refer back directly to new independent Claim 30 and further define the concentration of range of bleached fibers. For instance, Claim 31 recites a range of between 12 and 14 weight percent of the total cellulose fibers, and Claim 32 recites that "the cementitious binder is between 30 to 40 weight percent Portland cement and the aggregate consists essentially of 50 to 60 weight percent ground silica." New Claim 33 depends from independent Claim 1 and recites that the strain of the composite is substantially equal to or greater than the strain of an equivalent composite material reinforced with unbleached, premium grade cellulose fibers. Claims 30 through 33 are believed to be supported by paragraphs [0028] through [0033] and [0039] through [0044] of the specification.

### **Rejection for Obviousness-Type Double Patenting (ODP)**

Claims 1 and 4-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over all claims of U.S. Patent No. 6,506,248 B1 and 6,346,146 B1. Upon an indication of allowability of amended Claim 1, terminal disclaimers will be filed.

### **Rejection under 35 U.S.C. § 102 (a) and (e)**

The claims are rejected under § 102(a) and (e) as being anticipated by each of two patents filed by Duselis *et al.*, U.S. Patent Nos. 6,506,248 (“Duselis ‘248”) and 6,346,146 (“Duselis ‘146”). The basis is that “Duselis *et al.* teach a composition comprising a combination or blend of bleached and unbleached cellulose fibers in amounts overlapping applicant’s claims...and thus anticipate applicant’s claims.” Duselis *et al.* teaches a broad range or genus. But a broad range or genus does not anticipate a specific range like that recited in amended Claim 1 and new Claim 29 amended in this response to recite a narrower range of 12 to 17 weight percent of bleached fibers relative to the total cellulose fiber content. This range is not believed to be anticipated by Duselis *et al.* M.P.E.P. § 2131.03.

As discussed in MPEP § 2131.03, overlapping ranges fails to anticipate a recited species range if a specific embodiment is not disclosed. In *Atofina v. Great Lakes Chemical Corp.*, 78 USPQ2d 1417 (Fed. Cir. 2006), the court held that a genus cannot anticipate a species claim despite the fact that the claimed temperature range (330°C to 450°C) overlapped the prior art range (100°C to 500°C), because no specific embodiment was disclosed in the prior art patent. Surely, “and mixtures thereof” of Duselis does not disclose the specific embodiment of 12 to 17 weight percent of bleached fibers, and like the genus at issue in *Atofina*, does not anticipate the rejected

claims. The Duselis references do not suggest the unexpected improvements in strength that 12 to 17 weight percent bleached fibers conveys to a fiber cement composition. Amended Claims 1 and 28, and new Claim 29, recite this range. Figures 2 through 4 show these unexpected improvements in overall strength reflected by enhanced modulus of rupture (Fig. 2), and particularly strain (Fig. 3), and toughness (Fig. 4).

### **Rejections under 35 U.S.C. § 103**

The rejection under § 103(a) is in view of each Duselis reference, or alternatively, in view of Cook *et al.* (U.S. Patent No. 6,942,726) and Gregerson *et al.* (EP 263723).

The Examiner states that the Duselis references do not teach specific fiber types (Office Action, p. 4) or lengths (Office Action, p. 5). As discussed above, neither Duselis reference suggests the unexpected results in MOR, strain and toughness conveyed by the addition of 12 to 17 weight percent bleached fibers (relative to the total cellulose fiber concentration).

Claim 1, as amended, requires bleached cellulose fibers to comprise between 12 and 17 weight percent of the total amount of cellulose fibers. The Duselis references do not suggest a composite material having bleached cellulose fibers comprising between 12 and 17 weight percent of the total cellulose fiber content recited in amended Claim 1. For at least the reasons discussed above, Applicant submit that the unexpected results obtained with recited range patently distinguishes the pending claims over the Duselis references.

Cook *et al.* is relied on for the teaching of specific examples of cellulose fibers and relies on Gregerson *et al.* for the teaching of specific fiber lengths. Gregerson fails to teach or suggest

the recited proportion of bleached fibers of between about 12 to 17 weight percent, and in fact, Gregerson would find the result surprising considering that in most cases Gregerson teaches utilizing the bleached to unbleached fibers in a ratio of three to one and provides no teaching or suggestion of the unexpected results obtained with the recited concentration of bleached fibers. Gregerson in combination with Duselis and Cook also fails to teach or suggest the claimed invention of amended Claim 1.

Applicant has made a diligent effort to amend claims, to offer to submit a terminal disclaimer, and point out with particularity how the claimed invention is distinguishable over the prior art, and Applicant respectfully submits that the Application is in condition for allowance.

Applicant hereby authorizes the Commissioner to charge any additional fees or refunds that may be required by this paper to Gardere Wynne Sewell LLP Deposit Account No. 07-0153.

Respectfully submitted,

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